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June 18, 1992

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Ms. Donna R. Searcy,
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

RE: Loral Qualcomm Satellite Services, Inc.,
ET Docket No. 92-28 (File No. PP-30).

Dear Ms. Searcy:

Transmitted herewith for filing with the Commission in the above-referenced docket on behalf Loral Qualcomm Satellite Services, Inc., is an original and four copies of its "Motion To Strike Supplemental Information."

Should there be any questions regarding this document, please communicate with this office.

Respectfully submitted,

Katherine K. White for
William D. Wallace
(Member of Florida Bar only)

Enclosures

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Before The
Federal Communications Commission
Washington, DC 20554

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JUN 18 1992

In re Request of)
ELLIPSAT CORPORATION)
For a Pioneer's Preference)
in connection with its)
ELLIPSO satellite system)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ET Docket No. 92-28

File No. PP-30

MOTION TO STRIKE SUPPLEMENTAL INFORMATION

Loral Qualcomm Satellite Services, Inc. ("LQSS"), by its attorneys, hereby moves to strike the Supplemental Information filed on June 5, 1992, by Ellipsat Corporation ("Ellipsat") in connection with its request for a pioneer's preference for its Ellipso satellite communications system.^{1/}

The material submitted by Ellipsat consists solely of articles from the print media. There is simply no reason to

^{1/} On the same date, Ellipsat filed material for which it requested confidential treatment pursuant to Section 0.457(d) of the Commission's Rules. See Letter of Jill Abeshouse Stern (June 5, 1992). This material was not served on LQSS. LQSS objects to the submission of "confidential" material in this context because consideration of such material unnecessarily consumes limited Commission resources in evaluating whether the materials should receive confidential treatment, creates additional burdens for the parties, and precludes full and open evaluation of the information by interested persons.

However, on June 10, 1992, the Commission determined that the material was not entitled to confidential treatment and returned it to Ellipsat. See Letter of David R. Siddall (June 10, 1992). Accordingly, although LQSS objects to this unworkable method of filing material allegedly supporting requests for pioneer's preferences, it is not now filing objections to Ellipsat's request for confidential treatment.

trivialize the pioneer's preference process by asking the parties and public to comment on press clippings. Even if comments were solicited, the only conclusion which could be drawn from these materials is that Ellipsat has included no pioneering research in its Ellipso application. Accordingly, Ellipsat's supplemental information should be stricken.

Background

LQSS and Ellipsat have each filed applications for low-earth orbit ("LEO") satellite communications systems which would operate in the bands currently allocated to RDSS and provide voice, data and radiodetermination services. LQSS and Ellipsat have also each respectively requested award of a pioneer's preference. However, while LQSS has conclusively demonstrated a right to such a preference based on innovative technology,^{2/} Ellipsat bases its request not on technology but rather on the timing of its application and its proposal to use elliptical orbits for its satellites.^{3/}

I. ELLIPSAT'S SUPPLEMENTAL INFORMATION PROVIDES NO EVIDENCE BEARING ON WHETHER IT SHOULD RECEIVE A PIONEER'S PREFERENCE.

As Ellipsat states in its transmittal letter, the publicly-filed supplemental information consists solely of "[s]elected press coverage about the Ellipsat system." Letter of Jill

^{2/} See LQSS's Supplement to Request for Pioneer's Preference (filed June 12, 1992); LQSS's Request for Pioneer's Preference (filed Nov. 4, 1991); LQSS's Comments in Support of Request for Pioneer's Preference (filed April 8, 1992).

^{3/} See Ellipsat's Request for Pioneer's Preference (filed June 29, 1991); Ellipsat's Response to Oppositions and Reply to Comments (filed April 23, 1992).

Abeshouse Stern, at 1 (June 5, 1992). This material should be stricken from the record in ET Docket No. 92-28 as irrelevant and repetitive for the following reasons.

A. The material is irrelevant. There are no more eloquent words to demonstrate the irrelevancy of this supplement than Ellipsat's own description of similar material filed by Motorola:

"the Motorola filing is composed largely of irrelevant press clippings. . . ."

Ellipsat Corporation, Motion to Strike Supplement to Request for Preference, etc., at 2 (filed April 21, 1992). The conclusion in Ellipsat's own filing as to the value of such material should alone be sufficient basis for striking the press clippings from the record. There are, nevertheless, other sound reasons for rejecting this filing.

First, the press material does not present information on how Ellipsat's proposed RDSS system is innovative. Under Section 1.402 of the Commission's Rules, an applicant for a pioneer's preference must show that it has developed "new technology that is useful or necessary to the provision of a new radio-based service or that incorporates a significant enhancement or capability within an existing service." Request for Pioneer's Preference, 7 FCC Rcd 1625, 1637, ¶ 13 (1992) ("Little LEO Decision") (emphasis added); see also Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 6 FCC Rcd 3488, 3494, ¶ 47 ("Pioneer's Preference Order") (applicant must develop an "innovative proposal" which will lead to "the establishment of a service not currently provided or a substantial enhancement of an existing service").

Press clippings, such as those provided by Ellipsat, do nothing more than report what an applicant has put into its application before the Commission. There is nothing in this material which demonstrates that the proposal is, in fact, technologically innovative.^{3/}

Second, Ellipsat claims that the supplemental information proves "the fact that Ellipsat was the first of the large LEOs to file a concrete application at the Commission." Letter of Jill Abeshouse Stern, at 1 (June 5, 1992). Were there any dispute regarding the date of Ellipsat's filing, it presumably would be required to present more substantial evidence than second-hand reports from the trade press. In any event, the date of filing an application for a service does not necessarily indicate that the applicant was the first to develop the innovations which form the basis for the proposed new service. See Little LEO Decision, 7 FCC Rcd at 1627, ¶¶ 14-15 (outlining required criteria of innovativeness for pioneer's preference); Pioneer's Preference Order, 6 FCC Rcd at 3495, ¶ 57 (each applicant to be judged on whether it meets criteria of innovativeness).

Press clippings do not demonstrate technical innovation and have absolutely no probative value with respect to the criteria set for awarding a pioneer's preference. Ellipsat's supplemental material is thus irrelevant, as Ellipsat itself concluded with

^{3/} Apparently, Ellipsat's principal claimed technological innovation is the use of elliptical orbits for its LEO satellites. There is, of course, nothing "innovative" about elliptical orbits. Nor do elliptical orbits per se provide new or enhanced communications services to consumers. And, it is simply absurd to claim that trade press descriptions of elliptical orbits provide any proof of innovativeness.

respect to the press clippings submitted by Motorola, and should be stricken.

B. The material is repetitive. As Ellipsat freely admits, no technical documentation is contained in its supplemental material. The material consists solely of second-hand descriptions of Ellipsat's proposed system. These reports may or may not accurately describe the Ellipso system, but even were they accurate, the same information should be available in the application.

Thus, even if accurate, Ellipsat's supplemental material would at best be repetitive; and, if not accurate, it would be misleading. In either event, the supplemental material should be stricken.

C. The Material Is Inconsistent With Ellipsat's Claims.

If considered, Ellipsat's supplemental information would show that Ellipsat's claims for its system are unfounded, that its proposal cannot be considered innovative, and, therefore, that its request for a pioneer's preference should be dismissed or denied.

For example, included in Ellipsat's supplement is an article from the Washington Business Journal which indicates that Ellipsat developed its LEO satellite proposal after other applicants:

"[David] (Castiel) [president of Ellipsat] is not arriving early . . . but he's arriving cheaper," said John Pemberton, an analyst with the Gartner Group.

"D.C. Firm Plans to Set Up Cheap Satellite Network," Washington Business Journal (date illegible) (emphasis added). Its supplemental material indicates that it was not the first to

develop such a system, and, therefore, cannot claim to have submitted an "innovative" proposal on the basis of this material.^{4/}

Even Ellipsat's elliptical orbits are proven non-innovative by the material:

Ellipso system, proposed by Ellipsat Corp., would use satellites in highly elliptical orbits (HEO), pioneered in the mid-1960s by the then USSR's Molniya communication satellites.

"Low-Earth Orbit Communications Satellites Compete for Investors and U.S. Approval," Aviation Week & Space Technology (May 18, 1992). The Commission has made clear that, in awarding a pioneer's preference, it will apply its standard for innovativeness to an applicant's "new technology." See Little LEO Decision, 7 FCC Rcd at 1627, ¶ 13. Ellipsat does not meet this standard.

II. CONCLUSION.

The Ellipsat supplemental information is repetitive, provides no technical information supporting Ellipsat's request, and is irrelevant to whether Ellipsat merits a pioneer's preference, as Ellipsat has recognized in an analogous circumstance. Even if it were considered, the material would serve only to confirm what was

^{4/} In its Request for Pioneer's Preference, Ellipsat stated that its system would use "existing state-of-the-art technology in a novel fashion." Ellipsat's Request for Pioneer's Preference, at 2 (filed June 29, 1991). The Commission has already rejected requests which have a similar basis. See Little LEO Decision, 7 FCC Rcd at 1627, ¶ 17 ("ORBCOMM fails to meet its burden to demonstrate an innovation beyond existing communications technology"). Ellipsat's request should likewise be rejected.

already obvious -- that Ellipsat has not proposed a system with any innovative technology deserving of a pioneer's preference.

Accordingly, Ellipsat's Supplemental Information should be stricken.

Respectfully submitted,

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Dated: June 18, 1992

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 18th day of June, 1992, caused copies of the foregoing "Motion To Strike Supplemental Information" to be served by hand delivery (as indicated with *) or by U.S. mail, postage prepaid, to the following:

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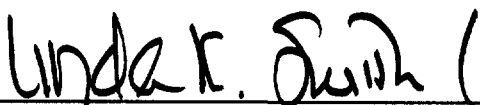
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